

Exhibit 4

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Plaintiff,

V.

17 CV 5808 (CS)

JEFF S. SMITH,

Defendant .

U.S. Courthouse
White Plains, N.Y.
August 1, 2017
11:20 a.m.

Before: **HON. CATHY SEIBEL,**
United States District Judge

APPEARANCES

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Official Court Reporter

1 THE COURT: Let me cut you off.

2 MS. BOUCHARD: Sure.

3 THE COURT: I'm leaving on vacation tomorrow.

4 MS. BOUCHARD: Okay, Your Honor.

5 THE COURT: Your timing is -- Plaintiff's timing is
6 impeccable.

7 MS. BOUCHARD: Yes, as it usually is in these
8 things. We would like to have the opportunity to at least
9 review the briefs before we're able to argue. There were many
10 misrepresentations just in the Complaint alone.

11 THE COURT: Give me a for instance.

12 MS. BOUCHARD: Certainly. We have proposed a very
13 scoped role for Mr. Smith, in a narrow area of cloud services.
14 That was not shared in the Complaint. I can pass up the
15 proposal.

16 Most importantly, that proposal keeps him out of
17 sales, it keeps him out of pricing. It prevents him from
18 soliciting customers that he engaged with at IBM. It also
19 prohibits him from soliciting employees at IBM, and, most
20 importantly, it confirms his agreement not to share
21 confidential and trade secret information.

22 THE COURT: So, what will he be doing?

23 MS. BOUCHARD: He'll be working in an area leading
24 internal teams in a marketplace, developer tools, and support
25 and manage service provider offerings.

1 MR. RICHMAN: I'm sorry. I'm sorry, Your Honor.

2 THE COURT: -- Mr. Richman.

3 MS. BOUCHARD: So, Your Honor, may I pass something
4 up.

5 THE COURT: Sure.

6 MS. BOUCHARD: Because they referenced the Gartner
7 report and they referenced in their Complaint that Amazon and
8 IBM are neck and neck. Okay. That was the impression that
9 they left in that Complaint, in that publicly filed Complaint.

10 In the same Gartner report, you will see that
11 Gartner prepared a chart and that chart has four quartiles,
12 and you will see where Amazon Web Services falls in that
13 quartile. Do you see it? It's on the top.

14 THE COURT: Yes, but I don't see why it's relevant.
15 I don't care if Amazon Web Services is kicking IBM's behind,
16 that's not --

17 MS. BOUCHARD: Your Honor --

18 THE COURT: So what?

19 MS. BOUCHARD: It does matter, because the
20 information that Mr. Smith would have at IBM would have to be
21 of use to Amazon. It is of no use. The Gartner report speaks
22 about the maturity of Amazon's product.

23 THE COURT: That I'm not buying. It's of no use?

24 MS. BOUCHARD: It is of no use, Your Honor.

25 THE COURT: Zero use? That they have absolutely no

1 interest in IBM -- what IBM is doing?

2 When we go to discovery in this case, they are not
3 going to find a single document in the possession of Amazon
4 Web Services where anybody at Amazon Web Services talks about
5 or wonders or expresses a concern or curiosity about what IBM
6 is doing?

7 MS. BOUCHARD: Maybe Microsoft.

8 THE COURT: That's really hard to believe.

9 MS. BOUCHARD: Yeah. Actually, it's going to be
10 more about Microsoft and it's going to be more about Google,
11 who are their actual competitors.

12 THE COURT: Well, I don't know. According to this
13 document, IBM is a visionary, not a leader.

14 MS. BOUCHARD: No. It's a, it's a middle of the
15 road visionary.

16 THE COURT: It's a middle of the road visionary.

17 So, when we --

18 MS. BOUCHARD: And it can't execute.

19 THE COURT: When we go through discovery in this
20 case, nobody is going to find any documents in Amazon Web
21 Services' computers or anywhere where they say, "I wonder what
22 IBM is working on," or, "I hear IBM is working on something,"
23 or, "we should do this because IBM can't do it," or, "we
24 should do this because we want to take customers from IBM."

25 MS. BOUCHARD: So, maybe there is a document, but